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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,969	03/26/2004	Wendell A. Gurtler	P06674US00	9821
803	7590	11/07/2005	EXAMINER	
STURM & FIX LLP 206 SIXTH AVENUE SUITE 1213 DES MOINES, IA 50309-4076			YEAGLEY, DANIEL S	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/810,969

Applicant(s)

GURTLER, WENDELL A.

Examiner

Daniel Yeagley

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 5, 6, 10, 15, 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-9, 11-14, 16, 17 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/26/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's election with traverse of Species I in the reply filed on 8/17/05 is acknowledged. Claims 5, 6, 10, 15, 18 and 19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/17/05. The traversal as understood was based on the ground(s) that claims 1, 2, 7, 8 and 16 are generic to each of the four species. Although the examiner agrees with applicant that these elected claims read on the all the species, it however does not nullify the restriction based on the reminder of the claims and the various species. Therefore, the traversal is not found persuasive because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, therefore the election has been treated as an election without traverse (MPEP § 818.03(a)). The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 –4, 7 – 9 and 11 – 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, lines 7, 8 and 12, the terms “the base frame [*assembly*]” lack antecedent basis, because it is not clear if applicant is referring to the trailer hitch assembly or the base frame.

Regarding claim 12, last line, the term “base frame [*assembly*]” lacks antecedent basis.

Regarding claim 12, line 12, the term “the hitch [*frame*]” lacks antecedent basis, because it is not clear if applicant is referring to the base frame or a hitch member.

Regarding claim 13, line 1-2, the term “the hitch [*frame*]” lacks antecedent basis.

Regarding claim 14, line 4, the term “the base frame [*member*]” lacks antecedent basis.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1 –4, 7 – 9, 11 – 14 and 16 – 17 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Kaplenski et al ‘037.

Kaplenski shows a trailer hitch assembly for use with a trailer and a pulling vehicle (figure 2) having a hitch (not shown) adapted to be connected to a trailer (column 8, lines 34-36), wherein a first end of an elongated hitch member (hitch attachment) connected to the hitch via element 40 and includes a movable connection 60 comprising a pivotal connection (pivot point at numeral 66 at left side of 62 or 64 which is operatively attached to the hitch attachment in fixed

Art Unit: 3611

relation to the base frame) and located adjacent a second end of the hitch member for permitting pivotal movement about a horizontal axis, wherein the movable connection is between the hitch member and a base frame 12 permitting the hitch and the hitch member to move between a first (elevated) and a second (lower) position relative to the base frame, wherein the hitch attachment (frame) has a central hitch frame member 40 attached to the hitch and spaced apart first and second spaced apart frame arms (left and right sides of element 50 and side walls of 14 that are connected to the central frame member, such that the base frame is adapted to be attached to a pulling vehicle, and an inflatable apparatus is connected to both of the hitch member and the base frame, the inflatable apparatus being at least one flexible air bag 16 having a container that containing a quantity of gas and can compress and cause the quantity of gas within the container to increase in pressure in response to movement of the hitch and the hitch member between the first and second positions relative to the base frame assembly, wherein the inflatable apparatus is connected to the elongated hitch member between the pivotal connection and the hitch and includes a first attachment member attached to the hitch member at numeral 50 and a second attachment member attached to the base frame at numeral 20, such that the first and second attachment members would be movable vertically with respect to one another in response to movement of the hitch and the hitch member between the first and second positions and may include a shock absorber having a first end directly or indirectly connected to the base frame and a second end directly or indirectly connected to the hitch member (column 7-11) which is readable on a method for cushioning the vertical downward movement of the tongue of a trailer relative to the rear of a vehicle, wherein the air container is between the pivot axis and the hitch

Art Unit: 3611

and would collapse in the vertical direction in response to movement of the hitch from an elevated to a lowered position as claimed.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Adams '198, Logan et al '603, Worley '098, Yarbrough '435, Boyd '548, and Lovell et al '542 shows a pivotal hitch assembly with a collapsible apparatus between the pivot and the hitch.

Hauri '322 shows a pivotal lift assembly with a collapsible apparatus between the second end of a pivoted elongated member and the distal first end of the elongated member.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is (571)-272-6655. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D. Morris can be reached on (571) - 272 - 6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3611

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.Y.



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